IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 698 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CLASSIC ELECTRONICS
Versus
PRAVINBHAI ALIAS PARIMAL C SHAH

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Appearance :

MR SURESH M SHAH for the applicant
MR PS CHAMPANERI for the opponent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/02/2006

ORAL JUDGMENT :

The petitioner herein is the original decree holder in whose favour money decree is passed in Special Civil Suit

No.64 of 1995 by the Civil Judge, Jamnagar. On the basis of the said decree, the petitioner filed execution application being Special Execution Application No.19 of 1998. In the said application, the present respondent raised his objection at Exhibit 11 pointing out that the suit was originally filed against one Pravinbhai C Shah, proprietor of C.Fulchand Chaturdas firm. According to the respondent, his name is Parimal Shah and, therefore, the said decree cannot be executed against him. In his application, the respondent has also pointed out that the plaintiff cannot effect change of name in the said manner and decree straightaway cannot be executed against him. The trial Court accepted the said objection and found that the execution petition is not maintainable against the present respondent. The execution application was accordingly disposed of by the trial Court. Against the order of the executing Court, this revision application is filed by the original decree-holder.

2 Mr S.M. Shah, learned advocate for the petitioner submitted that Parimal C Shah and Pravinbhai C Shah are the same person and, therefore, execution is rightly preferred against the present respondent. On the other hand, Mr Pankaj S Champaneri, learned advocate for the respondent has submitted that the name of the respondent – original applicant is Parimal C Shah and there is no decree against him nor he was concerned with C.Fulchand Chaturdas firm.

3 In my view, the question whether execution application against the respondent is maintainable or not in view of the discrepancy in the name is required to be decided by the trial

Court by recording the evidence. Whether Pravinbhai C Shah and Parimal C Shah are one and the same person is the question which is required to be decided after allowing the parties to lead the evidence. In a given case the executing Court also has power to record the evidence. In this view of the matter, the matter is required to be sent back to the executing court to pass a fresh order after allowing the parties to lead evidence in this behalf. This petition is accordingly allowed by quashing the order of the trial Court below Exhibit 11 and 15 in Special Execution Application No.19 of 1998. The learned Executing Court shall decide both the said applications de novo in the aforesaid Special Execution application No.19 of 1998 by allowing the parties to lead evidence in connection with the same. The learned Executing Court shall endeavour to dispose of Special Execution Application No.19 of 1998 within a period of six months from the date of receipt of writ of this Court. Rule is made absolute with no order as to costs.

(P.B.Majmudar, J.)

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